

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Case No.: 2:14-cv-872-JAD

**Order Denying Markem's Motion for  
Summary Judgment  
(Doc. 21)**

DUANE CHRISTY, an individual, on behalf of  
himself and those similarly situated,

Plaintiff,

vs.

MARKEM FINANCIAL SERVICES, INC, a Nevada  
Corporation,

Defendant.

Defendant Markem Financial Services moves for summary judgment against plaintiff Duane Christy, who claims that a letter Markem mailed him with the words “Markem Financial Services Inc. Contract Collection Dept” on the envelope violates § 1692(F) of the Fair Debt Collection Practices Act (“Debt Collection Act”). The section prohibits a debt collector from “using any language or symbol, other than the debt collector’s address, on any envelope when communicating with a consumer by use of the mails or by telegram.”<sup>1</sup> Markem argues that it was acting as an escrow agent—not a debt collector—when it sent the letter and is therefore exempt from the Debt Collections Act under 15 U.S.C § 1692(F)(i).

But none of the evidence Markem submits to support this argument or any other of its arguments<sup>2</sup> has been properly authenticated. In *Orr v. Bank of America*, the Ninth Circuit “made it clear that ‘unauthenticated documents cannot be considered in a motion for summary judgment.’”<sup>3</sup> The absence of authenticated evidence leaves Markem unable to demonstrate the absence of genuine

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<sup>1</sup> 15 U.S.C. § 1692(F)(8).

<sup>2</sup> Markem also argues it should be exempt under 15 U.S.C. § 1692(F)(ii) and 15 U.S.C. § 1692(F)(iii). *See* Doc. 21 at 4-5.

<sup>3</sup> *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 533 (9th Cir. 2011) (citing *Orr v. Bank of Am.*, 285 F.3d 764, 733 (9th Cir. 2002)).

1 issues of material fact—its burden on summary judgment.<sup>4</sup> I therefore exercise my discretion to  
2 deny Markem’s motion, having no admissible evidence showing me that Markem is entitled to  
3 judgment as a matter of law. But I will give Markem until August 8, 2015, to resubmit its motion  
4 with properly authenticated evidence.<sup>5</sup> I offer the following guidance to both parties, since Christy,  
5 too, failed to properly authenticate the evidence he submitted.<sup>6</sup>

6 To authenticate documents, a party must offer “evidence sufficient to support a finding that  
7 the matter in question is what the [party] claims.”<sup>7</sup> Because the summary judgment procedure is the  
8 pretrial functional equivalent of a directed-verdict motion, it requires consideration of the same  
9 caliber of evidence that would be admitted at trial;<sup>8</sup> it is insufficient for a litigant to merely attach a  
10 document to a summary judgment motion or opposition without affirmatively demonstrating its  
11 authenticity.

12 This demonstration can happen in two ways: (1) through the personal knowledge of a party  
13 who attests that the document is what it purports to be; or (2) any other manner permitted by Federal  
14 Rules of Evidence 901(b) (which provides ten methods of authentication) or 902 (identifying self-  
15 authenticating documents that “require no extrinsic evidence of authenticity in order to be  
16 admitted”).<sup>9</sup> Documents authenticated through personal knowledge must be attached to an affidavit  
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18 <sup>4</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

19 <sup>5</sup> The original cut-off for dispositive motions was January 28, 2015. *See* Doc. 8 at 2. I find good  
20 cause to extend this deadline for the limited purpose of permitting Markem to refile its summary  
21 judgment motion with properly authenticated exhibits.

22 <sup>6</sup> *See* Docs. 24, 25.

23 <sup>7</sup> *Las Vegas Sands*, 632 F.3d at 532-33 (quoting Fed. R. Evid. 901(a)).

24 <sup>8</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251 (citing *Bill Johnson’s Restaurants, Inc. v.*  
25 *NLRB*, 461 U.S. 731, 745 n.11 (1983)).

26 <sup>9</sup> Fed. R. Evid. 902 (listing domestic public documents that are sealed and signed or signed and  
27 certified; foreign public documents; certified copies of public records; official publications;  
28 newspapers and periodicals; trade inscriptions and the like; acknowledged or notarized documents;  
commercial paper and related documents; presumptions under a federal statute; and certified  
domestic or foreign records of a regularly conducted activity.)

1 signed by a person with personal knowledge about the document—such as the drafter or signer of the  
2 document, or the custodian of the document kept in the ordinary course of a business, depending on  
3 the type of document and its particular relevance—or to properly authenticated deposition testimony  
4 in which the same information was elicited.<sup>10</sup>

5 Neither party followed either of these procedures. Both are advised to if they decide to again  
6 move for or oppose summary judgment.

7 **Conclusion**

8 Accordingly, IT IS HEREBY ORDERED that Markem's Motion for Summary Judgment  
9 (**Doc. 21**) is **DENIED**. Markem has until August 8, 2015, to refile its motion with properly  
10 authenticated evidence.

11 DATED July 10, 2015.

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13 Jennifer A. Dorsey  
14 United States District Judge  
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24 <sup>10</sup> See *Orr*, 285 F.3d at 773-74 (“documents authenticated through personal knowledge must be  
25 “attached to an affidavit that meets the requirements of Fed. R. Civ. P. 56(e) and the affiant must be  
26 a person through whom the exhibits could be admitted into evidence.”); see also *id.* at 774  
27 (deposition transcripts are authenticated “by attaching the cover page of the deposition and the  
28 reporter’s certification to every deposition extract submitted. It is insufficient for a party to submit,  
without more, an affidavit from her counsel identifying the names of the deponent, the reporter, and  
the action and stating that the deposition is a ‘true and correct copy.’ Such an affidavit lacks  
foundation even if the affiant-counsel were present at the deposition.”).